IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10967 of 2001
with
SPECIAL CIVIL APPLICATION No 10968 of 2001
with
SPECIAL CIVIL APPLICATION No 11753 of 2001
with
SPECIAL CIVIL APPLICATION No 2033 of 2002
with
SPECIAL CIVIL APPLICATION No 2056 of 2002
with
SPECIAL CIVIL APPLICATION No 2257 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALSAD DISTRICT CENTRAL COOPERATIVE BANK LTD.
Versus
STATE OF GUJARAT V H SHAH IAS OR HIS SUCCESSOR

Appearance:
1. Special Civil Application No. 10967 of 2001
MR BM MANGUKIYA for Petitioner No. 1
MR KAMAL TRIVEDI, Addl. Adv. Gen. with GP for
Respondent No. 1,3 (in All matters)
NOTICE SERVED BY DS for Respondent No. 4
MR PS CHAMPANERI for Respondent No. 5

(As referred to in the order)

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 23/12/2002

ORAL CAV JUDGEMENT

1. Heard Mr.Vakharia, learned Sr. Counsel, and Mr.N.D.Nanavati, learned Sr. Counsel appearing with Mr.Mangukia, learned Counsel in SCA No.10967/2001, SCA No.10968/2001 and SCA No.11753/2001, Mr.P.M.Raval, learned Sr. Counsel appearing with Mr.Champaneri in SCA No.2056/2002 and SCA No.2257/2002 and Mr.Jhaveri, learned Counsel appearing in SCA No.2033/2002. On behalf of the concerned Government authority as well as the other, including the Registrar and the Election Officer, Mr.K.B.Trivedi, learned Addl. Advocate General appearing with the learned GP is heard.

2. It has been submitted by the aforesaid advocates that wherever their clients are either petitioners or respondents in the aforesaid group of petitions, the very submission may be treated as made for their respective clients and they have made their submissions for final disposal of the all petitions and, therefore, they may be disposed of accordingly by the common judgement finally.

3. In all these petitions, the facts are interconnected and common and interconnected questions are involved regarding amendment in the bye-laws of Valsad District Central Cooperative Bank Limited (hereinafter referred to as "Bank/Society") and its effect upon the election of the members of the Managing Committee of the Bank and hence they are being dealt with together.

4. The short facts of the case are that some petitions are preferred by the Bank, whereas some petitions are preferred by the member Cooperative Societies and, therefore, they shall be referred accordingly hereinafter, and further details shall be stated subsequently. There is no dispute on the point that the term of the members of the Managing Committee was to expire and has expired on November 20, 2001, subject to the deeming fixation of their entitlement to continue until the first meeting of the members of the Managing Committee is held after election. As per the petitioners who are member Cooperative Societies, since the election was to become due (the relevant year would

be beginning from 1-4-2001 to 31-3-2002 which will be referred as 2001-2002), and therefore, it is the contention of the member Cooperative Societies, who are petitioners herein, that the members whose names are required to be included for the preparation of the voters' list would be of those members, who were members of the Bank either individuals or the members of the Managing Committee of the member Cooperative Societies as on 31-1-2001 i.e. the last date of the year proceeding the year in which the election becomes due.

It is the case of the Bank that on 19th June, 2000, the Annual General Body of the Bank had passed the resolution for approval of the amendment in the bye-laws No.3(2), 5, 29(1) and 37 of the Bank. The English translation of bye-laws No.5 and 29(1) as it existed prior to the amendment would be as under:

Bye-law 5: Any Cooperative Society registered under Gujarat Cooperative Societies Act, within the working area of the Bank, can become the member with this Bank.

Bye-law 29(1): Nonexistent.

The proposed amendment (English translation) in the Bye-laws No.5 and 29(1) would be as under:

Bye-law 5: Any Cooperative Society registered under Gujarat Coop. Societies Act, within working area of the Bank, desirous to get loan, can become the member of this Bank.

Bye-law 29(1): For the purpose of above A, B, C, C, D, and DD, the representative of such Cooperative Societies shall have right of voting at the election and of contesting at the election as Director only if those member Cooperative Societies, in the period of last preceding three years, have obtained any loan or any loan is outstanding.

5. As per the Bank, reason for insertion of bye-law No.29(1) is with a view to see that the members may get more opportunity for getting loan and they may remain active thereby they can make financial improvement. The society in its Annual General Meeting dated 19-6-2000 passed the resolution for amendment in the bye-laws. However, as per Section 13 of the Gujarat Cooperative Societies Act (hereinafter referred to as the "Act")

since the approval is to be obtained from the Registrar, the application was made by the Bank to the Registrar, Cooperative Societies, Gandhinagar and ultimately on 9-3-2001, the order for sanctioning the amendment in the bye-laws was granted subject to the modification as mentioned therein. There is no dispute on the point that the Registrar in the order dated 9-3-2001 did not approve or sanction the proposed amendment in the bye-law No.5. However, so far as the bye-law No.29(1) is concerned, the Registrar added one more condition of having deposit of Rs.50,000/= in the last proceeding year by such member Cooperative Society. Saying in other words, the bye-law No.29(1) for which the sanction is granted by the Registrar as per the order dated 9-3-2001, would be as under (English Translation):

" For the purpose of above A, B, C, C, D, and DD, the representative of such Cooperative Societies shall have right of voting at the election and of contesting at the election as Director only if those member Cooperative Societies, in the period of last preceding three years, have obtained any loan or any loan is outstanding or there is deposit of Rs.50,000/= in the Bank in the period of last proceeding one year."

6. It is not necessary to refer to the other modification order in the other proposed bye-law since they are not relevant for the purpose of this petition.

7. Since the Registrar granted sanction for amendment in the bye-laws with modification, one of the conditions mentioned in the order dated 9-3-2001 was that such amendment in the bye-laws shall come into force only after the approval is granted by the General Board in the next meeting. Thereafter on 22-6-2001, the General Board has granted approval and, therefore, accordingly the aforesaid amendment in the bye-laws No.29(1) has come into force on 22-6-2001.

8. It is the case of the petitioner member Co-op. Societies that since the election had become due on November 20, 2001, the provisional list of the voters was required to be prepared by the bank as on 31-3-2001 and the same was accordingly not prepared and was forwarded to the District Registrar as well as to the Collector under Gujarat Specified Cooperative Societies Election to Committees Rules, 1982 (hereinafter referred to as "Rules"). However, it is also the case of the Bank that since the amendment had already come into effect, the provisional voters' list was prepared on the basis of the

aforesaid amendment in the bye-law No.29(1) and accordingly those member cooperative societies, which had not obtained any loan in the last proceeding three years, or had no loan outstanding during the said period, or had no deposit of Rs.50,000/=, were not included in the preliminary list of voters. It is also the case of the Bank that the provisional voters' list was published as per the Rules and last date for submitting objections was 1-11-2001 and the date for deciding objections was 5-11-2001 and the publication of the final voters' list was to be made on 9-11-2001. It is also the case of the bank that the member cooperative societies, which are objecting such voters' list in the present petitions had filed their objections, more particularly the client of Mr.Champaneri and Mr.Jhaveri and those objections were also decided by the Collector.

9. In the meantime, on 8-11-2001, the State Government exercised suo motu power against the order dated 9-3-2001 for sanctioning of the bye-laws by the State Registrar and the said amendment in the bye-laws was stayed. The perusal of the order dated 8-11-2001 passed by the State Government shows that it has been recorded in the said order that there is a representation made that such amendment in the bye-laws are contrary to the provisions of the Act and Election Rules and the voting rights of the members are snatched away and, therefore, the power is exercised.

10. On 9-11-2001, on account of the order dated 8-11-2001 passed by the State Government by exercise of the suo motu power in the appeal against the sanction of the bye-laws, the election officer and the deputy collector issued a public advertisement for postponement of the election until the final decision is given regarding amendment in the bye-laws. The said advertisement is published in the newspaper on 10-11-2001, but it appears that the publication of the final voters, which was to be made on 9-11-2001 has not been made and the process of finalization of the voters' list were postponed at that stage at that time by the election officer, who was holding the election as per the provisions of the Act. It is the case of the bank that the election process had already commenced since the programme dated 29-10-2001 was published in the newspaper for fixing various steps of election. However, it is the case of the member cooperative societies that the election officer had forwarded the programme for its publication on 9-11-2001, but since he himself had stayed the process of the election, there was no necessity to publish the programme and the bank unauthorisedly had

sent it to the newspaper for its publication. On account of the said action of the election officers and also for exercise of suo motu power by the State Government in revisional jurisdiction, the bank preferred SCA No.10967/2001 for appropriate orders to quash and set aside the action of the election authority to arrest the process of election and to declare that there is no power to postpone or cancel the election since the election process has already commenced and for appropriate writ against the exercise of suo motu power by the State Government etc.

11. It appears that on 12-11-2001, the Bank also preferred SCA No.10968/2001, apprehending that since the election is postponed, the power under Section 74D of the Act for appointment of the custodian may be exercised without giving opportunity and, therefore, for appropriate writ against the Government regarding the appointment of the custodian, the aforesaid petition was preferred. This Court, pending the petition, had granted stay against the appointment of the custodian.

12. It appears that on 29-11-2001, in the proceedings of suo motu power in appeal No.2/2001, the State Government passed the final order, whereby the matter was remanded to the Registrar of the Cooperative Societies. The State Government mainly considered various relevant aspects, more particularly as to its adverse effect upon the voting powers of the members are not examined and, therefore, the matter is remanded. AT that stage, the Bank preferred SCA No.11753/2001 for appropriate writ to challenge the order dated 29-11-2001 passed by the State Government.

13. Thereafter, on 16-1-2002 in SCAs No.10967/2001 and 10968/2001, the Court passed the following order, the relevant portion is reproduced below:

> "Considering the submissions made before me in respect of the order under challenge dated 29-11-2001 passed in Revision Application No.135/2001 by the Deputy Secretary(Appeals), Agriculture and Co-operation Department, Gandhinagar in respect of amendment to the bye-laws of the society of the petitioners, this Court is of the view that matter requires to be dealt with finally and the request is made by the counsel appearing in the matters that the matters be kept for hearing finally on 31-1-2002. Accordingly interim relief granted earlier in Special Civil Application No.10968/2001 is

continued. Learned Counsel appearing in the matters have also agreed that without prejudice to their contentions, they will cooperate with the Registrar in respect of the order of remand made by the authority and Mr.Kamal Trivedi, learned Addl. Advocate General states that it will be possible for the Registrar to take decision in the matter on or before 30.1.2002. The order passed by the Registrar be placed before the court on 31-1-2002. Liberty is granted to the parties to file affidavit in respect of the order passed by the Registrar in respect of the amendment of the bye-laws. Counsel appearing in the matters agree that they will file reply to the petitions on or before 28-1-2002. Accordingly S.O. to 31-1-2002.

Dt: 16-1-2002 (D.K.Trivedi, J.)"

14. Thereafter on 30-1-2002, the Registrar passed the order, whereby he considered that by proposed amendment in the bye-laws it is not likely to have any adverse effect in the exercise of the legal voting right of the members, and the proposed amendment in the bye-laws is with a view to activate the members and to allow the members to participate at the election, who are genuinely interested in the administration of the bank and, therefore, he maintained the earlier order dated 9-3-2001 passed by him for grant of sanction of amendment in the bye-laws.

15. It appears that against the order of the Registrar dated 30-1-2002, four member Cooperative societies namely; Amalsad Vibhag Doodh Udpadak Sahakari Mandali Ltd. and others" preferred Revision No.16 to 19/2002 before the State Government and the State Government on 1-2-2002 entertained the revision and granted stay against the order dated 30-1-2002 passed by the Registrar. Thereafter, in response thereto, the bank appeared before the State Government and objected to the stay order as well as to the revisions and made written representation before the State Government and the relevant para reads as under:

"10. So as to avoid the said situation, the Hon'ble High Court of Gujarat did not permit the finality of the order passed by the Registrar and directed that any order passed by the Registrar be placed before the Hon'ble High Court of Gujarat and the parties to the proceedings shall

be at liberty to exercise the order passed by the Hon'ble High Court of Gujarat. Therefore, the order passed by the Registrar becomes final only after the Hon'ble High Court of Gujarat takes decision on the same."

16. It was also submitted that the matters are at large pending before the High Court and, therefore, the appeal may be disposed of accordingly and the stay order may be vacated. It appears that thereafter the State Government on 4-2-2002 passed the order of vacating the stay and subsequently on 7-2-2002 disposed of the revision mainly on the ground that since the matters are pending before the High Court and the order dated 30-1-2002, which is under challenge is subject to the final decision by the High Court, it is not proper to exercise the revisional power and, therefore, the revision applications were not accepted. The member cooperative societies namely; Vejalpur Vibhag Seva Sahakari Mandali Ltd., preferred SCA No.2033/2002 against the aforesaid order dated 30-1-2002 of the Registrar, order dated 4-2-2002 of the State Government of vacating the stay in the revision and the order dated 7-2-2002 for disposal of the revision.

17. It appears that on 6-2-2002, the election officer republished the election programme since the said order was vacated by the State Government as per the order dated 4-2-2002 and the order, after remand, was passed by the Registrar on 30-1-2002 and he fixed up the date for declaration of the publication of the final voters' list as of 6-2-2002 and he fixed up various other stages of the election.

18. One Sahkari Khand Udhyog Mandal, member Cooperative Society, preferred SCA No.2056/2002 for appropriate writ against the publication of the election programme dated 6-2-2002 by filing petition on 11-2-2002. Thereafter, Vejalpur Vibhag Seva Sahakari Mandali Ltd., who is a member cooperative society has also preferred SCA No.2257/2002 for appropriate writ to quash and set aside the order dated 30-1-2002 passed by the Registrar of Cooperative Societies.

19. However, in the meantime, in above referred SCA No.2033/2002 and SCA No.2056/2002, on 14-2-2002, this Court, while issuing notice, passed the order of refusing interim relief against the implementation of the orders of the Registrar and of the State Government as well as against staying of the election pursuant to the notification dated 6-2-2002. The order dated 14-2-2002

came to be challenged before the Division Bench in LPA No.73/2002 and LPA No.77/2002. The Division Bench in the aforesaid LPA, as per the order dated 20-2-2002, after hearing all the parties, interpreted the order dated 16-1-2002 passed in SCA No.10967/2001 and SCA No.10968/2001 and observed as under:

" Thus it is very clear that the Court was anxious to consider the legality of the amendment to the bye-laws of the Society. So far as the Valsad District Cooperative Bank Limited is concerned, it appears that the arrangement was sought to be continued without prejudice to the rights and contentions of the parties and, therefore, there was no haste in taking decision as parties to the proceedings before the learned Single Judge agreed to the arrangement. It is also made clear by the learned Additional Advocate General, Mr.Kamal Trivedi that the Registrar shall take decision in the matter before 30th January, 2002 and the order that may be passed by the Registrar shall be placed before the Court on 31-1-2002 as directed by the Court. With a view to see that the parties are given full opportunity, parties were given liberty to file affidavit in respect of the order that may be passed by the Registrar in respect to the amendment to the bye-laws. However, no liberty was given to make the order operative."

The Division Bench further observed as under:

" It prima facie appears that it was not open for the Election Officer to act in this manner and it was for the parties to proceedings to make an application to the learned Single Judge seeking permission to make the order effective or operative after hearing."

It was further observed by the Division Bench as under:

" We fail to understand how the election officer has also acted upon the order which was supplied for the purpose of filing reply only. Before us, no subsequent order is placed indicating that the learned Single Judge made any order about the implementation or operation of the order made by the Registrar on remand and, therefore, it was highly improper on the part of the concerned authorities to act as per the order

made by the Registrar.

When attention of the learned Addl. Advocate General was drawn to the order made by the learned Single Judge and the other aspects, which we have referred to hereinabove, he fairly stated that it was highly improper on the part of the concerned authority to proceed further in the matter. He fairly stated that without the order made by the learned Single Judge, it was not open for the concerned authority to act as if the order is in operation. The learned Addl. Advocate General fairly stated that the order made by the Registrar on remand (dated 30th January, 2002) was not to be implemented by the officer concerned. In view of the above, we direct the State Government to abide by the statement made before us by the learned Addl. Advocate General. We also reserve the liberty to the parties to move learned Single Judge for obtaining appropriate orders in the matter."

From what is stated hereinabove, as the matters require consideration, we admit both the appeals and be listed for final hearing on 1-3-2002. We are prima facie of the view that the notice is required to be issued to the Registrar as well as the Election Officer to show cause as to why action under the provisions contained in the Contempt of Courts Act should not be initiated and for that purpose, we direct the Registry to issue notice returnable on 1st March, 2002."

20. On account of the aforesaid interpretation of the order dated 30-1-2002 passed by the Registrar (which is not accepted by the Division Bench in the aforesaid LPA) the process of the election was continued further by the Election Officer (of course, wrongly from the publication of the final voters' list upto the stage of withdrawal of the nomination papers) and thereafter the election was not proceeded further on account of direction by Division Bench to act as per statement. The statement was also made at the bar that the contempt proceedings, which came to be initiated on account of the above referred order of the Division Bench in the LPA, is still pending.

21. It appears that after the order, dated 29.11.01, the order dated 6.12.01 was passed by the State Govt through the Deputy Secretary(appeals) intimating the Dist.Registrar that as per the order of the State Govt the matter has been remanded to the Registrar, Gujarat State and therefore until the decision is rendered in the

said remanded case the process of election can not be undertaken and deserves to be postponed. It appears that the copy of the said order was also forwarded to the Registrar, Gujarat State, Collector, Valsad, Deputy Secretary and the Election Officer. Thereafter, in view of the said order, dated 6.2.01 the Deputy Collector passed the order of postponing the election process until the decision is rendered by the Registrar, Gujarat State in the aforesaid remanded case. At that stage, the Bank who is the petitioner in Spl.C.A.No.10967/01 preferred draft amendment praying for various reliefs and to quash the order dated 6.12.01 of the Deputy Secretary of the State Govt and the order, dated 7.12.01 of postponing the election by the Election Officer. The petitioner therein also prayed for appropriate writ directing the respondents to proceed with the election from the stage at which it has been interfered with by the State Govt or postponing by the Collector.

22. The Ld.Sr.counsel Mr.Vakharia and Mr.Nanavaty appearing with Mr.Mangukia mainly raised the contentions that the Election Officer has no power to postpone the election once the process of election is on and Mr.Vakharia alternatively submitted that even if the power to postpone the election is read with the Election Officer, then also for postponing or cancelling the election, the power must be exercised in the same manner as is required for declaration of election and such power, in any case, must be exercised only for bonafide purpose, and in his submission, the power in the present case has been exercised with malafide purpose under political pressure and therefore the action on the part of the Election Officer postponing the election, in any case, is bad in law. Mr.Vakharia also submitted that it is always within the scope of the power of the General Board of a Cooperative Society, which in the present case, District level bank, to amend the bylaws and he submitted that the byelaws could be amended with retrospective effect also. However, in his submission, in the present case, the byelaws which are amended can not be said to be with retrospective effect because he submitted that the bylaws have been amended with effect from 22.6.01 and the term was to expire in November, 2001 and therefore when the provisional voters' list came to be prepared on 25.10.2001`the bylaws were already amended and as a result thereof the effect was required to be given at the time when the provisional voters' list was prepared and therefore it can not be said that the bylaws are operated retrospectively. He submitted that at the most it can be said to be retro-active and all those members of the society who fulfill the criteria can only

exercise the voting right or can contest the election through their authorised representative and those who are not eligible can not be included in the voters' list and therefore he submitted that there is nothing wrong in giving effect so far as the bylaws are concerned. However, he fairly submitted that on account of the interpretation of the order, dated 16.1.01 primafacie made by the Division Bench of this court in the concerned Letters Patent Appeal, if the court accepts the contentions, then election deserves to be proceed further, then the same would be from the stage of publication of final voters' list i.e. from 9.11.01 onwards since in his submission the order dated 9.11.01 passed by the Election Officer postponing the election is ex-facie bad in law. Mr.Vakharia also submitted that once the process of election had completed upto 8.11.01 till the finalization of objections by the Collector, even if this court finds that the bylaws either could not be amended or is wrongly given effect retrospectively, the right was crystallized upto 8.11.01 and the process of election can not be set at naught and the election has proceeded upto 8.11.01, and it can be proceeded onwards that is after the stage of finalization of objections to the provisional voters' list and from the stage of publication of voters' list. Mr.Vakharia also submitted that as per the settled legal position this court while exercising power under Article 226 of the Constitution normally would not interfere with the election process and would leave the parties to have the remedy after the election process if over. He submitted that after the election of the members of the Managing Committee of the Bank is over the member cooperative societies or other members have right to challenge the election under section 145 U before the Gujarat State Coop.Tribunal and therefore at this stage the petitions for interference with the process of election preferred by the member cooperative societies may not be entertained and be rejected.

23. Ld.Sr.Counsel Mr.Nanavaty appearing for the bank while supporting the submissions of Mr.Vakharia has contended that a wrong picture is canvassed that the bylaws are applied retrospectively whereas in reality they are given effect prospectively. He also submitted that since the alternative efficacious remedy is available to the petitioners under section 145 U read with relevant Rules and more particularly Rule 82(D)(iii)(iv). So far as the challenge to the election and the action of the Election Officer is concerned the concerned member cooperative society should be relegated to remedy of election petition. He submitted that in the

election petition the tribunal may also additionally examine as to whether the result of the election is materially effected or not and the process of election which is already completed upto the stage of withdrawal of nomination forms and as a consequence thereof all candidates are not contesting and the process upto that stage may not be set aside by this court while exercising power under Article 226 of the Constitution and in his submission it would not be proper to exercise the power for setting aside the election which is already held. The learned counsel submitted that it is well settled that the right to vote and right to participate in the election is a statutory right and for that the remedy is provided under the statute and therefore the member cooperative societies who are challenging the process of election must be relegated to the election petition only. Mr.Nanavaty also submitted that the election is not stayed at the instance of the Bank and therefore in any event the power for appointment of custodian under section 74D can not be exercised. Mr.Nanavaty also submitted that in any event the bylaws have been amended with the motive of activating members who are genuinely interested in the management and to give representations to only such active members and to keep defunct members or dummy members away and it can not be said that the society can not amend the bylaws for such purpose. He submitted that even if this court finds that for the present election the bylaw is operating harshly against the existing members since the purpose or intention of amendment in the bylaws is to activate members and allow only such active members, it may be allowed to be operated in any case from the next election if not in this election. He submitted that there are large number of Districtlevel and Statelevel cooperative bodies in the State which contain such type of bylaws and rightly so because the defunct and dummy members can not be allowed to participate in the election.

24. Mr.P.M.Raval, Ld.Sr.Counsel appearing with Mr.Chapaneri for the member cooperative societies mainly contended that there is no authority with the general body of any cooperative society to bring about such amendment in the bylaws and since such type of such amendment in the bylaws runs counter to the cooperative principles. The learned counsel submitted that there can not be bylaw or amendment thereof against the cooperative principles. He submitted that so far as the eligibility criteria for admission as the member is concerned the amendment is not allowed by the Registrar and therefore once any person or society is admitted as member they have right to vote at the election and such right

provided under the statute can not be taken away by so-called amendment in the bylaws. Mr.Raval also submitted that under Maharashtra Cooperative Societies Act there is express enabling provision which is not there in the Gujarat Cooperative Societies Act and therefore there is no source of power with the society to make such amendment in the bylaws. Mr.Raval also alternatively submitted that even if it is assumed for the sake of argument that the amendment in the bylaws can be made then also the election is required to be held on the basis of eligibility criteria on the due date which in the present case would be 31.3.01 and therefore if the contention of the petitioners is accepted it in terms results into giving retrospective effect to the bylaws. Mr.Raval also submitted that it is well settled that even subordinate legislation can not be validly made taking away the existing rights of the eligible persons whereas preparing the bylaws and its amendment thereof is of much lesser power than that of making subordinate legislation. He has submitted that it is only in a extreme case, the law can be made by the Parliament or legislature to enact with retrospective effect. Therefore, he submitted that the bylaws can not be made applicable to those persons who are already admitted as members of the Bank, and it would be, at the most, for newly admitted members. He submitted that the action of preparation of voters' list is totally vitiated since all those members who were otherwise eligible on 31.3.01 are kept out of the provisional voters' list due to amendment in the bylaws and in his submission, on the basis of figures recorded by the Registrar of Cooperative societies in the order, dated 31.3.02 out of total 1078 cooperative societies 553 cooperative societies shall be kept away from election and therefore he submitted that it would not only result into keeping away large number of eligible members from the election but the member cooperative societies shall loose their right to participate in the election for all times to come if such amendment in the bylaws or the effect given by the bank is accepted. Mr.Raval submitted that whatever may be the purpose of bylaws, but once there is no power or contravention to the provisions of the Act, it can not be sanctioned by the Registrar and therefore the sanctioning order of the bylaws and further order after remanded, dated January 30, 2002 are illegal and deserves to be quashed.

25. Learned Counsel Mr.Jhaveri appearing for member cooperative societies while supporting the submissions of Mr.Raval has submitted that under no circumstances the bylaws can be amended with retrospective effect. He further submitted that the bank with malafide purpose

published the election programme in the newspaper on 10.1.02 though such programme was not to be published and in his submission the bank with a view to avail of the ground of no interference with the election process lastly with a malafide purpose has published the said election programme which was otherwise not required to be published. He submitted that the bank had no such right to publish the election programme and such publication can be made only by the Election Officer.

26. Mr.Kamal Trivedi, Ld.Addl.AG appearing with Mr.Oza, Govt.Pleader has submitted that there is power with the Election Officer either to cancel or postpone the election, but he submitted that once the State Govt stayed the amendment in the bylaws and remanded the matter thereafter it could be said to be one of relevant considerations for the purpose of postponing the election since as a consequence of bylaws, whole voters' list would be changed. Mr.Trivedi also submitted that even if such amendment in the bylaws is for the eligible members, it is doubtful that whether such amendment can be made with retrospective effect. Ld.Addl.AG also submitted that the due date of election will be as per Election Rules of 1982 and he submitted that the voters' list is required to be prepared on the basis of members of the society as on 31.3.01 since the election had become due for the year 2001-2002. He also submitted that since the effect of the order dated 30.1.02 was not to be given, but inspite of the same, it was wrongly given and the process of election is stayed as per the statement made and therefore he submitted that in view of the order passed by the Division Bench of this court in the above Letters Patent Appeal while while interpreting the effect of the order dated 30.1.02 it can at the most be said that the process of preparation of voters' list had reached upto 8.11.01. If the order for sanctioning the amendment is set aside the voters' list will have to be prepared afresh since large number of member cooperative societies and their representatives are kept away from the provisional voters' list and on account of present litigation the election has not been held and the term of members of the Managing Committee is over on November 20, 2001, therefore, the court may decide the matter either way so that the election can be held at the earliest. He also submitted that the allegations of political malafides are denied and are not true and correct and the power has been exercised within the scope and ambit of the Act.

27. In view of the contentions raised on both sides, in my view that the points, which arise for consideration

of this court, are as under:

(i) What is true and correct effect and interpretation of bylaw No.29(1) keeping in view the provisions of the Act and Rules?
(ii) Whether the bank can amend the bylaw by inserting by law No.29(1) or whether the amending order granting sanction to the amendment in the bylaw on the part of the authority is legal or valid?
(iii) What will be the due date of election and the relevant date for preparation of the voters' list for such election?
(iv) Whether the legality and validity of the order sanctioning the amendment in bylaw can be examined by the Election Tribunal under section 145 (U) of the Act?
(v) Whether the Election Officer has power to postpone or cancel the election and, if yes, whether it has been rightly postponed in the present case?
(vi) What will be the consequential effect upon the present election and thereafter?

28. Concentrating upon the above referred first and second points it transpires that the bye-law No.29(1) in terms is intended to restrict the voting right of the representative of such cooperative societies, who have either not obtained any loan or no loan is outstanding or are not having the deposit of Rs.50,000/= or more. Therefore, in terms, the said bye-law No.29(1) results into putting the restriction upon the voting right of the representatives of such member cooperative societies. The important aspect is that bye-law No.5, which was simultaneously proposed to be amended has remained unaltered and the registrar has declined sanction and as a consequence thereof bye-law No.5 remained as it is and, therefore, in that view of the matter, any cooperative society registered within the working area of the bank can become member of the Bank. On combined reading of bye-law No.5 with bye-law No.29(1), it is clear that any cooperative society registered within the working area of the Bank can become member, but unless such society has obtained any loan from the Bank in the last three preceding years or any loan is outstanding in the last three preceding three years or it has deposited an amount of Rs.50,000/= or more, the representative of such society shall neither be in a position to caste the vote, nor will they be in a position to contest election for the director. At this stage, it would be necessary to consider the provisions of Section 27 of the Act, which reads as under:

"27. No rights of membership to be exercised till due payments are made- No person shall exercise the rights of a member of a society, until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed by the rules, or the bye-laws of such society."

29. Therefore, a person cannot exercise rights of a member of a society until he has made the payment to the society in respect of membership or acquired such interest in the society as may be prescribed under the Rules or bye-laws of such society.

30. The aforesaid Section speaks for exercising the rights as the member, which may also include the voting right. However, it cannot be said that the member of the society has only to exercise the voting right and there are no other rights with the members of the society. As the member of the society, one may have the right of attending the general body meeting, right to apply for loan, right to stand as a guarantor, right to participate in the discussions of various issues at the time of general body meeting, right to vote at the election and also to contest at the election. Section 28 of the Act provides for different mode and method of regulating the voting rights. Sub-section 8 provides for special regulation of the voting rights of individual members in a federal society. Therefore, it is clear that Section 28 provides the different mode of regulating the voting rights. Various sub-sections of Section 28, inter alia, provide for different manner and method of regulating the voting rights of different categories of members and, therefore, it cannot be said that the method and manner provided for regulating the voting rights under Section 28 are exhaustive in nature, nor can it be said that the society has no authority to regulate the manner and method of voting rights of certain categories of members, which are neither provided, nor stipulated under Section 28. Therefore, under these circumstances it can be said that on conjoint reading of Section 27 with Section 28 of the Act it appears that a member of a society has various rights to be exercised as member and voting right or voting power is one of such rights to be exercised by such member. The voting right of members of the Society are regulated in the manner provided under Section 28, but such method and manner of regulating voting rights are not exhaustive and the society can also provide additional criteria and also can have manner and method for regulating such voting rights.

31. Keeping in view the aforesaid interpretation of Section 27 read with Section 28 of the Act, if the matter is examined for the purpose of interpreting bye-law No.29(1), it appears that the intention behind the insertion of the bye-law No.29(1) is to give representation in the management of the society to those persons, who are representatives of such societies, who have taken loan or have any loan outstanding, or have made investment of Rs.50,000/= or more in the Bank. The second intention appears to be to keep those member societies away from the management, who are either not active or have not transacted the business of taking loan with the Bank or not made any investment with the Bank of an amount of Rs.50,000/= or more. If such type of bye-laws are not there in the society, the consequence would be that those members who are not active or have neither made any investment, nor have taken any loan, would exercise the voting rights only at the election. Therefore, status of such cooperative societies, who have not transacted any loan business or have not made any investment would be simpliciter as that of voters and they would continue to be the vote banks for the persons who are aspirant to become office-bearers in such societies. It is a hard reality and perhaps it would not be out of place to take judicial notice of the things happening in such cooperative societies, which are treated as root-level power points that whosoever, any particular group or body, comes to power, realises that certain class of certain voters are not going to support at the ensuing election then such group or body in power with a view to see that the genuinely interested class is put into minority, new societies which are rather in the nature of dummy cooperative societies or which are not in any manner interested in the management of the Bank are admitted as members and as a result thereof the number of voters of such type societies would be more in comparison to the societies, which are genuinely interested in the management of the Bank and as a consequence thereof, the atmosphere of majority is being created. Therefore, in my view the enabling power with the Bank should be read to amend the bye-laws for providing additional criteria or exercising the voting rights with a view to activate the member cooperative societies and also with a view to keep the defunct, dummy or nonactive members away from elections and power positions in the Bank. Therefore, it is not true that such powers for amendment in the bye-laws are not available with the general body of the society or that such amendment in the bye-laws runs counter to the provisions of Section 27 or 28 of the Act. Therefore, I cannot agree with the contention raised by

Mr.P.M.Raval appearing for the member Cooperative Societies that amendment of such bye-laws is against the basic cooperative principles. As such, such amendment in the bye-laws would encourage and activate the non-active member and keep away dummy and defunct members from the election and, therefore, it would rather subserve the real interest and purpose of cooperative societies and it cannot be said to be frustrating or against the basic cooperative principles. As such, such type of amendment in the bye-laws is with a legitimate purpose for activating the members in the management of the society and to keep defunct, dummy and nonactive members away from the elections and power positions in the society. However, such by-law should provide reasonable and equal opportunity to all members to get themselves activated in the management or business of society and power to make such amendment cannot be exercised arbitrarily or with absurdity or with ulterior or oblique motive. Therefore, the bye-law No.29(1) is not in conflict with the provisions of Section 27 or 28 of the Act and in view of the interpretation of by-law No.29(1) as stated hereinafter, it cannot be said to be operating unreasonably and, therefore, it cannot be said that the Registrar has no authority to grant the sanction to the amendment in the bye-laws.

32. However, it is well settled that any provisions of the Act or Rules or Bye-laws, unless it is made expressly retrospective, it is to be treated as prospective. Even otherwise also, normally no power can be read with the general body of the society to amend the bye-laws with retrospective effect so as to take away or alter duly vested rights of a member in a society but I am not expressing any final view since not necessary at this stage. The correct and true interpretation of bye-law 29(1) as sanctioned by the Registrar would be that if the member society has either not taken any loan, or any loan is not outstanding in the last preceding three years or has not made any investment of Rs.50,000/= or more in the last preceding three years, the representatives of such member cooperative societies shall have no right to vote or to contest at the election. Therefore, framing of the bye-laws or its effect cannot be read as taking away any vested rights of the member cooperative societies or its representatives. Mr.Vakharia, on behalf of the Bank, attempted to contend that since the amendment is made applicable in the preparation of the provisional voters' list on 25th October, 2001, the applicability of the bye-law cannot be said to be retrospective. In my view, as per the discussion which may be made hereinafter, the relevant

date for the preparation of the provisional voters' list would be 31st March, 2001 and, therefore, when the right accrued under the statutory rule to the members of voting and of participating in the election, if altered or taken away by bye-law No.29(1), it would in term, result into giving retrospective effect and not prospective. It was also contended on behalf of the Bank that since Section 145C of the Act provides one month's time to complete the election prior to the expiry of the term, the voters' list can be prepared one month prior to the expiry of the term and, therefore, no retrospective effect to the amendment in the bye-laws is given. In my view, if such an interpretation as canvassed on behalf of the Bank is accepted it would not only run counter to the scheme of the election rules, more particularly Rules 3 and 4(1), but it would also nullify the effect of Rules 3 and 4(1) and in view of the express provisions of Rules 3 and 4(1) of the Election Rules various judgements cited by Mr.Vakharia in respect of giving effect to the amendment in the bye-laws would not be applicable to the facts of the present case. Similarly, when the bye-laws themselves are not made retrospective by General Body itself, nor there is any indication in the bye-law No.29(1) itself to give retrospective effect, whether the bye-law can be amended with retrospective effect or not, would not be of much importance and, therefore, I am of the view that it is not necessary for the Court at this stage to examine in detail as to whether the bye-law can be amended with retrospective effect or not.

33. Now, concentrating upon the third point, it is an admitted position that the election had become due in the year 2001-2002 since the term of the members of the managing committee had expired on November 20, 2001. Section 74 C(1), which is relevant is reproduced below:

"74C(1) The election of the members of the committees and of the officers by the committee, of the societies of the categories mentioned below shall be subject to the provision of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter:-"

Rules 3 and 4(1) read as under:

"3.Annual report of names of Societies in which elections are to be held.- The District Registrar shall, every year, within ninety days before drawing up the accounts report to the Collector the names and addresses of the societies in his District, in which elections are to be held

during the year under the provisions of section 74C read with Chapter XI-A. The District Registrar shall send to the Collector with his report two copies of the bye-laws of each of the said societies."

"4(1) Provisional list of voters.- (1) A provisional list of voters shall be prepared in Gujarati by every society for the year in which general election is due to be held. Persons who are members as on the date of drawing up the accounts of the year immediately preceding the year in which such election is due shall be included in the provisional list. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituencywise as laid down in the bye-laws."

34. Therefore, on correct interpretation of the aforesaid rules, it transpires that since the election has become due in the year 2001-02, the provisional list of voters are to be prepared on the basis of the position prevailing as on 31-3-2001. Therefore, the existing members as on March 31, 2001 had a right to vote and right to participate at the election including to contest the election. In my view, the true and correct effect of bye-law 29(1) would be not to alter or to affect adversely in any manner to the already accrued right of the members to vote and to participate at the election.

In the case of "Ramchandra Ganpat Shinde and Another v. State of Manarashtra and Others", reported in 1993(4) SCC, 216, the Apex Court has observed as under:

"6. It is the case of the appellants that after the final list was published by the District Collector on December 17, 1991, A.K.Patil, the Chairman, got enrolled 2000 members and made them eligible to exercise franchise in this favour apprehending that he would be defeated in the general election, colluded with More and Mule, i.e. Director and a member of the society respectively, got filed collusive writ petitions, abused the process of the court, played fraud on the court and obtained collusive orders to make the provisional list of voters to be as on June 30, 1992 and to conduct elections on that basis. The District Collector filed counter-affidavit in this Court admitting that Rule 4 and the circular issued by the Government in this behalf envisage that the final

> list of voters in force before the postponement of the election by the State Government shall be valid but since the High Court issued the direction to treat June 30, 1992 to be the date for reckoning the provisional list of voters to be valid, he had no option but to abide by the direction and to conduct the election in terms thereof."

35. In view of the above, the relevant date for the preparation of voters' list would be as that of 31-3-2001 and, therefore, considering the provisions of the Act read with the aforesaid Rules, it transpires that the right had accrued to the members of the Bank to vote and to participate at the election, which had become due in the year 2001-2002 and such rights cannot be said to have been taken away or altered in any manner by the amendment of bye-law No.29(1). Even otherwise also it is an admitted position that on 12-3-2001 when the Registrar passed the order, bye-law No.29(1) as proposed is not approved, but the same is sanctioned with the modification and with the condition that the amendment shall come into effect only after the approval is granted by the general board of the society. It is an admitted position that the general board of the Bank has granted approval on 22-6-2001 and, therefore, it cannot be said that the bye-law had come into effect prior to said date and as a matter of fact, legally bye-law No.29(1) has come into effect only from 22-6-2001, i.e the date on which the general board granted approval to the same. Therefore, in any case, on March 31, 2001, when the aforesaid right of voting and participating in the next election accrued to the members, such an amendment in the bye-law was not there at all and, therefore, even if it is considered that the bye-law came into effect on 22-6-2001, the same cannot in any manner, alter or affect adversely the rights of the members as accrued on 31-3-2001. When the Registrar had granted sanction with the specific condition to give effect to the amendment in the bye-laws only after the approval of the general board, I cannot accept the contention of Mr.Vakharia that once the approval is granted, the bye-law would come into effect from the date on which the first resolution was passed by the general board i.e. on 19-6-2000 or from the date on which the Registrar had granted sanction i.e. on 12-3-2001.

36. The contention raised on behalf of the Bank by Mr.Vakharia and Mr.Nanavati is that even if the bye-law is treated as having come into effect on 22-6-2001, when the term of the elected body was to expire on 20-11-2001

or when the provisional voters' list was prepared on 25-10-2001, the bye-law was already there and, therefore, the provisional voters' list was required to be prepared and was rightly prepared by giving effect to bye-law No.29(1) and, therefore, it is not retrospective but perspective. Such contention, prima facie, appears to be attractive, but upon the close scrutiny of the Act and the Rules as referred herein above, read with the above referred judgement of the Apex Court, reported in 1993(4) SCC (supra), it transpires that there is an obligation cast upon the society to prepare a provisional voters' list of the persons, who are members as on the date of drawing up of accounts of the year immediately preceding the year in which the election is due and they are to be included in the provisional voters' list. In view of the clear language of Rule 3 read with Rule 4(1), I cannot accept the contention raised by Mr.Vakharia and by Mr.Nanavati that the election had become due only in October, 2001, and the provisional voters' list was actually prepared since the term was to expire on 20-11-2001. If such an interpretation is accepted the same would be contrary to Rule 3 read with Rule 4(1). Further the language of Rule 3 is "shall" and, therefore, it may be said to be a mandatory in nature on the part of the society concerned to prepare the provisional voters' list by including all the members as on the date of drawing up of accounts immediately preceding the year in which such election had become due, which in the present case is 31-3-2001. In spite of the aforesaid language of the statutory rule, if the Bank or the society concerned conducts default or does not prepare the voters' list as per the mandate of the rule and delays in preparing the voters' list, it can hardly be contended that when the provisional list was prepared on 25-10-2001, the amended bye-laws are given effect to and, therefore, it is with the perspective effect and not retrospective. If such powers are vested with the society to prepare the voters' list on the basis of position prevailing at the time of preparation of the voters' list and not on the basis of the position prevailing as on 31-3-2001, it would not only result into nullifying the effect of the mandate of the rule, but it would also result into allowing bank to take undue benefit of its own default. On the contrary, if the provisional voters' list is prepared on the basis of the position of the bye-law prevailing as on 25-10-2001 and by ignoring the position prevailing as on 31-3-2001, it would result into not only giving go by to the mandatory requirements of the rule, but it would also frustrate and adversely effect or rather take away the right created by the Act read with the Rule of the members to vote and to participate at the next election.

Therefore, Mr.Vakharia is not right in submitting that the action of the Bank in giving effect to bye-law No.29(1) on 25-10-2001 cannot be said to be retrospective in nature, but is perspective in effect. As such, if the bye-law is given effect on 25-10-2001 at the time of preparation of provisional voters' list by ignoring the rights of the members to vote and to participate in the next election it would in terms result into retrospective effect, which is neither legally permissible, nor was even intended in the bye-laws or by the Registrar while giving sanction to the bye-laws and, therefore, the action of the Bank of giving effect to bye-law No.29 in preparing the provisional list for the election, which became due in the year 2001-2002 is absolutely unwarranted and also in contravention to the provisions of the Act and the Rules itself. Since the relevant date for preparing the provisional voters' list for the election of the members of the managing committee of the Bank became due in the year 2001-2002, the voters' list was required to be prepared on the position of the bye-laws prevailing as on 31-3-2001 and because at the relevant point of time, bye-law No.29(1) did not come into operation and the same was not be required to be taken into consideration for the purpose of preparing the voters' list.

37. Concentrating upon the above referred point No.4, it is well settled that if the statute provides the remedy of election petition under the Act, normally this Court while exercising power under Article 226 of the Constitution would relegate the parties to the proceedings of the election petition. At the same time, such principles of alternative remedy provided under the statute is not operating as a bar upon the jurisdiction of this Court under Article 226 of the Constitution of India. Mr.Vakharia tried to rely upon the judgement of the Apex Court reported in 2000(8) SCC, 216 to contend that the Court shall not exercise the power to interrupt the election process, which has reached upto the stage of finalization of the objections in the preparation of the provisional voters' list In the aforesaid decision, the Apex Court has construed the scope and abmit of the power of the High Court under Article 329 of the Constitution of India. So far as the election of the specified societies are concerned, there is no constitutional bar as provided under Article 329 of the Constitution regarding the election being conducted by the Election Commission for elections of the legislative assembly and the parliament. In the present case, on account of the availability of the statutory alternative remedy, it can at the most be contended that by way of self-imposed

restriction in exercise of the power under Article 226 of the Constitution of India, the Court may not exercise the power under Article 226 of the Constitution on the basis of the principles analogues to the scheme under Representative of People's Act. It is true that normally the principles in the matter of interference of the election process as laid down by the case law would be applicable (of the election under the Representative of People's Act) and can be made applicable, but such principles would not apply with the same vigor in the matter of election of specified cooperative societies since Article 329 is not applicable to the elections of specified Cooperative Societies under the Act. Therefore, normally either in a grave case of inherent lack of jurisdiction on the part of the authority or in a matter where the election tribunal will not be in a position to examine such questions Court may exercise the power under Article 226 of the Constitution of India. Power to grant sanction to the amendment in the bye-laws flows from Section 13 of the Act and such powers are with the Registrar. Section 145U provides for dispute relating to the election to be submitted to the Tribunal notwithstanding anything contained in the Section 96 or in other provisions of the Act. Section 145U of the Act does not provide for the scope and ambit of the power of the Tribunal to decide the dispute relating to the election. However, Rule 74 of the election rules of 1982 provides that no election shall be called in question except by an election petition presented to the Tribunal, in accordance with the provision of Section 145U and these rules. Rule 75 provides that the election can be questioned by any candidate or any voter within two months from the date of the declaration of the result of the election. The aforesaid Sub-rule 1 of Rule 75 has been interpreted by the Division Bench of this Court in the case of "Lilabhai Ranabhai Desai and Ors. v. Pirabhai Valabhai Desai and Ors.", reported in 2002(3) GLR, 2560, where at para 4, the Division Bench has observed as under:

> "4. Sub-Rule (1) of Rule 75 of the Rules provides that an election petition calling in question any election may be presented by any candidate or any voter within two months from the date of declaration of the result of the election. Thus, except the candidate or any voter, no one has a right to maintain an election petition, calling in question any election governed by the Act and the Rules."

After observing the same at para 4, the Division

Bench further observed at para 6 as under:

"In view of the fact that respondent Nos.1, 2 and 3, who were election-petitioners before the Tribunal, were neither candidates nor voters, they had no right to maintain the election petition wherein the impugned order was passed. The election petition being not maintainable, at the behest of said respondents the impugned order passed therein is illegal and liable to be quashed."

38. In view of the aforesaid decision of the Division Bench, the petition can be presented only by a candidate or a voter. The member cooperative societies, which are making grievances against the amendment in the bye-laws are kept away from the voters' list itself on account of bye-law No.29 at the time when the provisional voters' list was prepared and it is the case of the Bank that in view of the Bye-law No.29(1) the representative of the member cooperative societies are not entitled to be included in the voters' list or to contest the election and, therefore, it appears that the member cooperative society or their representatives who are not included in the voters' list at the time of provisional list as well as even after the decision of the Collector upon the objections or rather in the tentative final voters' list and, therefore, they cannot prefer the election petition even if they are relegated to the election petition after the election.

Rule 82 provides grounds for declaring election to be void. Rule 82 of the Rules which is relevant reads as under:

"82. Grounds for declaring election to be void.If the Government is of opinion:-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under these rules, or

(b) that any corrupt practice has been committed by a returned candidate or his Election Agent or by any other person with the consent of a returned candidate or his Election Agent, or

(c) that any nomination paper has been improperly rejected, or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his Election Agent, or

(iii) by the improper reception, refusal or rejection of any Vote or the reception of any Vote which is void, or

(iv) by any non-compliance with the provision of the Act or any rules made thereunder,

the Tribunal shall declare the election of the returned candidate to be void."

39. Therefore, in my view the legality and the validity of the order of the Registrar to sanction the amendment of the bye-laws cannot be examined by the Tribunal while examining the legality and the validity of the election petition.

40. Further more, as observed earlier the date on which the provisional voters' list was to be prepared is 31-3-2001. The effect of the bye-law No.29(1) was not at all in existence and in spite of the same, unauthorisedly the voters' list is prepared in such a manner and as a consequence thereof, on the basis of the figure recorded by the Registrar, while passing the order on 31-1-2001 out of the total 1076 member cooperative societies, about 553 member cooperative societies have been excluded from the voters' list and if such unauthorisedly prepared voters' list is allowed to operate by relegating the parties to the election petition, it would, not only result into frustrating the rights of about more than 50% of the eligible voters to be included in the voters' list for all time to come, but it would also be rather against the basic principles of democracy. In view of the aforesaid three peculiar circumstances of the case; (1) the member cooperative societies whose names are not included in the voters' list cannot present election petition for challenging the election; (2) the election

Tribunal will have no jurisdiction to examine the legality and validity of the sanction order of the Registrar for the amendment in the bye-laws and (3) if the unauthorisedly prepared voters' list by giving wrong effect to bye-law No.29(1) is allowed to operate, it would keep about more than 50% of eligible voters away from the election, which would be contrary to the democratic principles, I cannot accept the contention raised on behalf of the petitioner Bank that this Court should relegate the member cooperative societies to the election petition before the Election Tribunal and may not exercise the power under Article 226 of the Constitution of India.

41. As regards point No.5 regarding the power of Election Officer to postpone or cancel election is concerned, as per the provisions of General Clause Act, the authority who has power to do a particular act has the same power to undo the said action. In this regard it would be worthwhile to refer to the case of "Jayantbhai Manubhai Patel and Ors. v. Arun Subodhbhai Mehta and Ors." reported in AIR 1989 SC, 1289. In the case before the Apex Court, the outgoing mayor had convened the meeting for election of the new mayor of all elected corporators and thereafter the said meeting was postponed. The said decision of the mayor was challenged before the High Court and ultimately the Division Bench of the High Court struck down the action of the mayor on the ground that there was no authority with him to postpone the meeting and such decision can only be taken by the Councillors present at the meeting. The matter was carried to the Apex Court and at para 15, after taking the same parity under the scheme of the Representation of the People's Act, the Apex Court has observed as under:

" Section 153 confers upon the Election Commissioner the power to extend the time for the completion of election. Section 21 of the Central General Clauses Act is in pari materia with Section 21 of the Bomb ay General Clauses Act which was applicable in the case before us and which we have already set out earlier. It is true that the ratio of this case is not directly applicable to the case before us. However, it does appear to us that, on a parity of reasoning, it must be held that the Mayor had the implied power to cancel a meeting or postpone a meeting which was duly convened before the said meeting commenced and to convene the same on a subsequent occasion. It is needless to say that this power

must be exercised by the Mayor bona fide and not for a collateral purpose. The power must again be exercised for a proper purpose. If the Mayor is unable to show this, then the postponement of the meeting must be held to be bad. But it is not possible to say that the Mayor had no power to cancel a meeting duly convened and to direct that the same should be held on a later day provided that the power was exercised bona fide and for a justified purpose."

42. In view of the above observations of the Apex Court, in my view, the Election Officer has power to postpone or cancel the election and such power must be exercised for bonafide purposes and cannot be exercised for malafide purposes. Mr.Vakharia wanted to distinguish the power of the Election Officer with the power of the mayor under the Bombay Provincial Municipal Corporations Act, 1949 or with the power of the Election Commissioner under the Representation of People's Act by showing a separate scheme. In my view, such distinction is irrelevant for the purpose of applying the principles in the matter of exercise of the power by the Election Officer, exercising power under the Election Rules 1982.

43. It was alternatively contended by Mr.Vakharia on behalf of the petitioners that even if it is read that the power is there with the Election Officer, such power must be exercised in the same manner and it should also be exercised for bonafide purposes and not for malafide purposes. The perusal of the order dated 9-11-2001 of the Election Officer shows that in view of the order dated 8-11-2001 of the State Government in suo motu appeal against the amendment of the bye-laws, the election is postponed. It is true that the State Government has no power under the revisional jurisdiction to direct the Election Office to postpone or cancel the election and to that extent the contention of Mr.Vakharia deserves to be accepted. However, the perusal of the order dated 9-11-2001 shows that it is not on account of the direction given by the State Government the election is postponed, but it is on account of the stay granted by the State Government against the amendment in the bye-laws the election is postponed. Naturally, when the amendment itself is stayed, the provisional voters' list or decision upon the objections on the basis of which the amendment has come into effect, when if allowed to operate, is to result into keeping away large number of, and rather about more than 50% of the voters away from the election, it cannot be said that granting of the stay by the State Government against the amendment in the

bye-laws was an irrelevant circumstance for the purpose of postponement of the election. In my view, it would be one of the strong circumstances for postponing of the election, because if the amendment is set aside or otherwise, ultimately the whole voters' list will have to be prepared afresh and, therefore, it cannot be said that the power for postponement of the election has been exercised by the Election Officer is not bonafide and is malafide. So far as the allegations of political malafides are concerned, there is no sufficient material produced on record to link up the exercise of the power exercised by the Election Officer with the so-called allegations of political malafides and, therefore, the contention raised by Mr.Vakharia on behalf of the petitioners that the power is exercised by the Election Officer on 9-11-2001 for postponement of election with malafide purpose fails. It was contended on behalf of the petitioners that even for postponement of election the same procedure as required for declaration of election is not followed. In this regard Rule 8 was pressed in service, by contending that the consultation with the District Registrar is must even if the election is to be postponed or cancelled. Firstly, the petitioners have not produced any material to show that the decision is taken by the Election Officer without consulting the District Registrar, nor has it come on record that the District Registrar has entered into any correspondence with the Election Officer regarding non-consultation. In any case, the Collector or the Election Officer is in full control of the election and even if the District Registrar is not consulted at the time when the dates are altered or the election is to be postponed, in my view since the consultation with the District Registrar is only a directory in nature and not mandatory, it would vitiate the decision of the Election Officer or the Collector to postpone the election and, therefore, the said contention also fails.

44. In case of "Ramchandra Ganpat Shinde" (supra) while considering the pari materia to Rule 4 framed under Maharashtra Cooperative Societies Act, the Apex Court, at para 5, has observed as under:

> "Its reading adumbrates that the provisional list of voters of every society shall be prepared by the society for "the year in which general election is due to be held". Persons who are members as on 30th June of the year immediately preceding the year in which such election is due, shall alone be included in the provisional list. Thereby, it is clear that the society shall

prepare a provisional list of voters, comprising of all the members of that society for the year in which general election is due to be held. But the persons who are members of the society as on 30th June of the year immediately preceding the year in which such election is due should alone be included in the provisional list and eligible to vote at the election."

It is an admitted position that in the present case, instead of 30th June, it is 31st March.

45. In view of the above, it is concluded that the Election Officer has power to postpone or cancel the election and in the present case he has rightly postpone the election on 9-11-2001.

46. In view of the aforesaid discussion, while considering the consequential effect upon the present election and thereafter, it appears that the bye-law No.29(1), though had not come into effect on the due date of the preparation of the provisional voters' list, i.e. 31-3-2001, was unauthorisedly and wrongly given effect to by the Bank while preparing the provisional voters' list. The Registrar, while passing the order dated 30-1-2002 ignored the said aspect because at the relevant point of time when he passed the order the provisional voters' list was not only prepared, but the matter had reached upto the stage of deciding the objections against the provisional voters' list before the Collector. While arriving at the findings that the amendment in the bye-laws is not to result into adverse effect upon the rights of the voters, it was obligatory on the part of the Registrar to consider the aforesaid and to clarify that the bye-law has come into effect only from 22-6-2001 and not prior to that and, therefore, it will not adversely effect the rights of the members of the Bank in the present election. The aforesaid was required to be considered by the Registrar because once it comes on record that the present 553 member societies out of total 1076 member societies had right to be included in the voters' list as on March 31, 2001 and in spite of the same it was on account of giving effect in unauthorised manner to bye-law No.29(1) by the Bank the eligible member Co-op Societies and others are kept out. More over, so far as the next election is concerned, there shall be enough time to the so-called non-active members to be active by transacting with the Bank in getting loan or by depositing the requisite amount and the same would rather achieve the object of the bye-law which is to be given effect to. The Registrar, in my view, by totally

ignoring the subsequent aspects and by not properly interpreting the by-law No.29(1), has committed error in passing the order dated 30-1-2001 and to that extent the order of the Registrar deserves to be modified.

47. Since there is absolutely no authority on the part of the Bank to give effect to the bye-law No.29(1) on 31-3-2001, which was the relevant date for the preparation of the voters' list, the action pursuant to the said so-called provisional voters' list prepared by the Bank on the basis that the bye-law has come into operation in my view is not only, ab initio, void, but would also result into frustrating the voting right and participation at the next election to about 50% of the total members of the Bank. In any event, election officer and the Collector also while deciding the objections have not taken into consideration the aforesaid true and correct effect of the bye-law No.29(1). In my view the whole process of preparation of the provisional voters' list upto the stage of deciding the objections i.e. upto 8th November, 2001 is vitiated and if it is allowed to stand, it would result into keeping away more than 50% of the voters from their legal right to vote and participate at the election of the members of the managing committee. If the action is found to be, ab initio, void of preparing the voters' list and the finalization of the objections and is resulting into frustrating the basic principles of democracy, it can hardly legitimately be contended that the process of preparation of the voters' list, which continued upto 8-11-2001 should be allowed to be continued further when this Court ultimately in view of the aforesaid discussion finds that the provisional voters' list will have to be prepared afresh by giving proper and legal effect to the bye-laws as existing on 31-3-2001.

48. On behalf of the petitioners, reliance was placed by Mr.Vakharia upon the judgement of the Division Bench of this Court in the case of "Siddhpur Taluka Co-operative Purchase & Sales Union & Ors. v. State of Gujarat & Ors.", reported in 2002 (2) GLR, 1357, to contend that the rights of the members in the society can be altered on account of reconstitution of revenue limits of Taluka, irrespective of the fact that whether the bye-laws are amended or not and it was submitted on behalf of the petitioners by Mr.Vakharia that in the said decision of "Siddhpur Taluka Co-operative Purchase & Sales Union & Ors. v. State of Gujarat & Ors." (supra), the Division Bench negatived the submission that in absence of the amendment in the bye-laws, the membership

of the primary society to federal societies cannot automatically cease or that their rights to vote or contest as the member cannot be taken away. The close scrutiny of the aforesaid judgement shows that in the case before the Division Bench, this Court was considering the effect of reconstitution of Talukas in the State on account of the decision of the Government vis-a-vis the rights of the members of Taluka level cooperative societies. The Division Bench at para 15 has observed as under:

> "what we discover is that the structure of the Co-operative Societies from State level down to Taluka level is based on the revenue areas."

49. The Court further observed that "It is, therefore, not possible to accept the contention advanced on behalf of the petitioners that revenue area of Taluka or District has no relationship with the holding of elections to Co-operative society of District or Taluka level." Further, under Section 74 C in the categories of specified cooperative societies, the language of the legislature used under Section 74 C (1) (iv) (b) is "all Taluka Co-operative Sale and Purchase Organisations" and under Clause (vi) (b) "all taluka Co-operative processing societies." Therefore, in view of the aforesaid and in view of the status given on the basis of the revenue limits, the Division Bench found that irrespective of the amendment in the bye-laws, the right shall stand altered. In the present case, the rights of the members of the Bank are not sought to be altered on account of alteration of the revenue limits by the State Government, but the same are altered on account of the amendment in the bye-laws itself, that, too, by giving wrong effect to the bye-laws on 31-3-2001, though such bye-laws never came into operation on that day. Therefore, in my view, the facts of the present case are altogether different and the aforesaid judgement in the case of "Siddhpur Taluka Co-operative Purchase & Sales Union & Ors. v. State of Gujarat & Ors." (supra) would not be any help to the respondent Bank. Further, as observed earlier, the Election Officer, though not warranted by the Court, on his own, has proceeded with the election, as if the order dated 31-1-2002 of the Registrar has come into operation and in view of the prima facie observations of the Division Bench of this Court dated 20-2-2002 in the aforesaid LPA No.73 of 2001, the further action to proceed with the election on the basis of the order dated 30-1-2002 has come into effect was found to be highly improper and was also found to be contemptuous by the Division Bench and, therefore, the action thereafter i.e.

after 9-11-2001 by the Election Officer to proceed with the election is not only absolutely unwarranted, but the same is also in contravention to the orders passed by this Court dated 16-1-2001 in SCA No.10967/2001. As observed earlier, even the learned Counsel, Mr.Vakharia fairly tried to maintain the action of the election authority up to 8-11-2001 only and not thereafter. Since as observed earlier, the whole provisional voters' list is vitiated on account of wrong interpretation of the amendment in the bye-laws and as a result thereof, about more than 50% of the members of the societies are kept away from the voters' list and the election, in my view, with a view to maintain the democratic principles in its proper spirit and by giving full effect to the observations and the findings recorded by this Court on the question of law as observed earlier, it would be just and proper to direct the District Registrar to ensure that the Bank prepares the provisional voters' list on the basis of the bye-laws prevailing as on 31-3-2001 and to undertake further steps for holding of the election including the finalization of such provisional voters' list and to complete the same within a stipulated time limit.

50. It was also contended on behalf of the Bank that the preparation of the voters' list is an integral part of the election process and since the process of election is on, the Court should not interfere with the process of election. The distinguishing features in the present case is that the election officer himself has stayed election and, therefore, the election is not stayed under the order of this Court. At this stage the Court is called upon to examine the legality and validity of the order sanctioning the bye-laws and the effect of the amendment in the bye-laws in the election because even the election officer while taking the decision for postponement of election found it proper to postpone the election since the amendment was stayed by the State Government. Therefore, this Court is required to examine the legality and validity of the action on the part of the election officer to postpone the election on account of giving effect to the amendment in the bye-laws. If the true and correct effect of bye-law No.29(1) is given, the provisional voters' list and its finalization will have to be undertaken afresh and the Bank, the District Registrar and the Election Officer have to undertake a fresh exercise, therefore, it cannot be said that on account of any order passed by this Court the election was interrupted. Neither the election Tribunal shall be able to examine the legality and validity of the order sanctioning the bye-laws, nor the member cooperative

societies, whose names are excluded in the voters' list shall be competent to prefer election petition for challenging the election. Therefore, in view of the peculiar circumstances of the present case and more particularly when the election itself is postponed by the election officer, whether the preparation of the voters' list is an integral part of the election or not would be of not much importance for the facts and circumstances of the present case.

51. In view of the observations made hereinabove, SCA No.10967/2001, which is preferred by the Bank deserved to be dismissed. SCA No.11753/2001, which is preferred against the order dated 29-11-2001 passed by the State Government is disposed of as having become infructuous since after the order dated 29-11-2001 passed by the State Government for remanding the matter, the Registrar, pursuant to the said order of remand, has passed the final order on 31-1-2002 pending SCA No.11753/2001 and, therefore, the same shall stand disposed of accordingly. As regards SCA No.2033/2002, SCA No.2056/2002 and SCA No.2257/2002 preferred by the member cooperative societies of the Bank, the order dated 31-1-2002 passed by the Registrar read with the order dated 9th/12th March, 2001 is maintained with the clarification that the amendment in the bye-law No.29(1) has legally come into effect from 22-6-2001 and the relevant date for the preparation of the provisional voters' list is 31-3-2001 and, therefore, bye-law No.29(1) shall not be applicable to the provisional voters' list to be prepared on the position as prevailing on 31-3-2001. Saying in other words, the members of the Bank as on 31-3-2001 shall be entitled to be included in the voters' list irrespective of their taking loan from the Bank in the said preceding years or irrespective of the deposit of less than Rs.50,000/=, or irrespective of deposit of Rs.50,000/= or more or in any case irrespective of bye-law No.29(1) and the action of the Deputy Collector and the Election Officer dated 6-2-2002 of proceeding further with the election process on the basis that the order dated 30-1-2002 of the Registrar has already come into operation, is quashed and set aside and the concerned Deputy Collector and the Election Officer are further directed to proceed with the election of the Bank from the stage of preparation of the provisional voters' list as on 31-3-2001 without taking into consideration the amendment in the bye-law No.29(1) and the Deputy Collector, Election Officer, the District Registrar and the Bank are further directed to initiate the process of preparing the provisional voters' list and to complete the same within a period of one month from today and to

complete the election of the members of the Managing Committee up to the stage of declaration of results and of holding first meeting of the newly elected members of the Managing Committee within a period of three months thereafter. All the aforesaid SCA being No.2033/2002, 2056/2002 and 2257/2002 shall stand allowed only to the aforesaid extent.

52. So far as SCA No.10968/2002, which is preferred against the appointment of the custodian on account of the postponement of the election is concerned, since stipulated time bound programme is issued of initiating process within one month and to complete the election within a period of three months thereafter, in my view, no useful purpose would be served in deciding the wider question regarding the scope and ambit the power of appointing the custodian and on the point as to whether the Bank can be held responsible for delay in process of the election or the Election Officer himself to be held responsible for delay in process of the election and, therefore, considering the aforesaid peculiar circumstances of the case, the interim relief granted against the appointment of custodian shall remain in operation up to a period of four months from today and SCA No.10968/2001 shall stand disposed of in terms of the directions and the continuation of interim relief for four months from today.

53. Considering the facts and circumstances of the case, there shall be no orders as to costs in all the aforesaid SCAs.

54. Rule is discharged in SCA No.10967/2001 and SCA No.11753/2001 and subject to the order of continuation of the interim relief as observed earlier, rule is also discharged in SCA No.10968/2001. Rule is made absolute accordingly to the aforesaid extent in SCA No.2033/2002, No.2056/2002 and No.2257/2002.

23-12-2002 (Jayant Patel, J.)

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